

**DRAFT**

Court File No.

**FEDERAL COURT OF CANADA**

**B E T W E E N:**

GLAD DAY BOOKSHOP INC. *and*  
*David Moldenhauer.*

Applicant

- and -

HER MAJESTY THE QUEEN ~~and~~

~~MARGARET GILLIS~~

*Minister of National Revenue*  
*Deputy Minister of National Revenue* Respondents

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date:

Issued by: \_\_\_\_\_  
Local Registrar

Address of Court Office:

145 Queen Street West  
Toronto, Ontario  
M5H 2N7

TO: ATTORNEY GENERAL

AND TO: MARGARET GILLIS

and TO:

1. The corporate plaintiff operates a book store in the City of Toronto. The personal plaintiff is the owner and operator of the business.

2. <sup>Her Majesty the Queen by & through the</sup> The defendant Minister of National Revenue is responsible for the administration of the Customs Act and Customs Tariff Act. <sup>and for all the action of customs officials hereinafter complained of.</sup> The Deputy Minister of Customs and Excise is responsible for the Minister and has final authority with respect to appeals from the decision of customs officers exercising their powers under the Customs Act to seize "obscene" material imported into Canada.

3. The plaintiffs imported certain materials into Canada which were ordered detained by customs officials in November and December of 1988. The customs officials made a <sup>series of</sup> preliminary determinations that the materials <sup>was</sup> ~~were~~ obscene. <sup>These decisions were appealed to the Deputy Minister pursuant to the provisions of the Customs Act.</sup>

4. The Deputy Minister has made no decision to this time regarding that material.

5. <sup>and October 3 & 4</sup> The plaintiffs imported further similar material in August <sup>2</sup> of 1989. By agreement, no determination of obscenity was made by customs officials pending the decision by the Deputy Minister with respect to the November/December <sup>1988</sup> seizures.

*In addition*  
6. The plaintiffs imported certain other materials in August 10 of 1989. These were seized and detained, *but* No ~~initial~~ decision *that* ~~the materials are obscene~~ *justify the detention* has been made. No appeal from this decision has been launched because there is no decision to appeal from.

7. The plaintiffs estimate that the *total* value of the seized material is approximately \$5,000.00. The plaintiffs assert that their business has been harmed by the delay in receiving the material. Some of the seized material are magazines which may become stale dated. The plaintiffs fear that they will be unable to return the material to the American distributors if an unfavourable decision is eventually made given the delays.

8. The plaintiffs assert that the books in question are not obscene within the meaning of the Criminal Code as interpreted in light of the Charter of Rights and Freedoms, sections 1 and 2<sup>(b)</sup>. The ~~personal~~ plaintiff *their* asserts that ~~his~~ *section 2(b) of* rights of freedom of expression and speech as guaranteed by the Charter of Rights and Freedoms are infringed by the actions of the defendants *by* ~~in~~ *the imported material* detaining ~~for~~ *and keeping it for* a protracted period of time. ~~imported material~~.

9. The plaintiffs assert that the defendant Minister and his officials are incompetent to make the complex legal decision whether or not *this* material is "obscene". Such decision requires



*in many cases  
\* subsequently released.*

sophisticated understanding of the Criminal Code and the Charter of Rights and Freedoms. It can only be determined by a judicial authority. The plaintiffs will prove at trial a record of absurd seizures of recognized literary works and works of obvious social importance which customs officials nevertheless detained. The plaintiffs assert that the Minister and his officials are ignorant of the gay community in Canada and its culture and are unable to make decisions regarding the purported obscenity of gay material without discriminating unfairly against the gay community. The plaintiffs assert that a double-standard is applied to comparable "~~adult entertainment~~ <sup>erotica</sup>" material permitted to enter the country for "gay" and "straight" communities.

10. The plaintiffs assert that the system of seizure and appeals with respect to allegedly obscene material is cumbersome and lengthy. The plaintiffs assert that the procedures are per se a violation of their rights under the Charter of Rights and Freedoms, sections 2(b) and 1.

11. The plaintiffs assert that seizures under the Customs Act are unnecessary for any public purpose. The existing sections of the Criminal Code permitting seizure and prosecution protect the public in all manners necessary.

12. The plaintiffs claim as follows:

- a) damages for breach of statutory duty to exercise powers under the Customs Act fairly and promptly;
- b) damages for violation of rights under the Charter of Rights and Freedoms;
- c) a declaration that the sections of the Customs Act violate the Charter of Rights and Freedoms;
- d) an Order that seized material be delivered to the plaintiffs forthwith.

The plaintiffs propose that this action be tried in the City of Toronto.

Date:

ILER, CAMPBELL & ASSOCIATES  
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(416) 598-0103

~~CHARLES CAMPBELL~~  
Solicitors for the Plaintiff

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